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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 749

UNITED AIRCRAFT CORPORATION, *Petitioner*

v.

LODGE 743, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO
and
LODGE 1746, INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO
and
NATIONAL LABOR RELATIONS BOARD, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT UNIONS IN OPPOSITION

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BRIEF FOR RESPONDENT UNIONS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 1a-12a) is reported at 337 F. 2d 5; the opinion of the district court (A. 3-11)[1] is reported at 220 F. Supp. 19.

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[1] "A" refers to those portions of the transcript printed for the use of the court below and filed with the petition.

JURISDICTION

The judgment of the court of appeals (Pet. 12a) was entered on October 1, 1964. The petition for a writ of certiorari was filed on December 10, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). On January 8, 1965, respondent's time to file its brief in opposition was extended to February 9, 1965.

QUESTION PRESENTED

Whether the courts below properly held that a particular arbitration agreement did not bar recourse to the Board.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set forth at pp. 13a-17a of the petition.

STATEMENT

The Union, having lost the strike (Pet. 2a), signed a settlement agreement in which the Company promised to reinstate strikers if their jobs were "available" and to accord certain preferences to others (A. 48-50, 94-98). The Company refused to extend to fifty (50) strikers "the rights and privileges * * * accorded other striking employees under the strike settlement agreements because of the [mis] conduct of these employees during the strike" (A. 43, 91). The Union asserted that these employees had "not engaged in conduct, which warrants" withholding from them the same contractual rights and privileges the Company was willing to accord others (*ibid.*). The parties agreed to submit "this issue" to final and binding arbitration (A. 44, 91).

The arbitrators were empowered to decide only "the aforesaid issue" (A. 43, 92) and the hearing was confined to evidence "concerning the facts relevant to such issue" (*ibid.*). The arbitrators were explicitly denied "jurisdiction or authority to award back pay to any employee involved in this matter, or to assess against any of the parties any monetary award or penalty" and were empowered to determine only whether the listed employees should "be accorded all, or any part, or none of the rights and privileges accorded other striking employees under the strike settlement agreements" (A. 44, 92-93).

The arbitrators held that some of the fifty were "guilty of the misconduct as charged" and disposed of their status *vis-a-vis* the settlement agreement accordingly (A. 5, 39, 87).

By November, 1960, the Union became convinced that the Company had engaged in an ingeniously contrived and artfully camouflaged program of illegal retaliation against strikers, and that the fifty accused of misconduct were also victims. Accordingly, the Union filed unfair labor practice charges with the Board, including the fifty as alleged discriminatees. In addition, the Union filed breach of contract actions under Section 301 contending, inter alia, that the Company had violated the agreement by refusing to reinstate striking employees to available jobs and by concealing evidence of availability.

The Company obstructed the Board's investigation,[2] hampered the Union's discovery,[3] instituted retaliatory

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[2] *National Labor Relations Board* v. *United Aircraft Corp.*, 200 F. Supp. 48 (D. Conn.), aff'd, 300 F. 2d 442 (2d Cir.).

[3] *Local 743, IAM* v. *United Aircraft Corp.*, 53 LRRM 2904, 2905 (D. Conn.).

state court suits for fifteen million dollars damages[4] and filed the counterclaims in issue here to compel the Union to withdraw the charges insofar as they relate to the fifty strikers. The District Court dismissed the counterclaims (A. 3-11) and the Court of Appeals affirmed.

ARGUMENT

Petitioner's crucial assumption that "the issues [in the unfair labor practice case were] settled in the arbitration proceeding" (Pet., p. 3) is unfounded. The sole issue in the arbitration proceeding was whether certain rights created by contract should be accorded employees to whom the Company refused to accord those rights. The sole issue in the Board proceeding is whether the Company's refusal to reinstate those employees was discriminatory and, if so, whether their reinstatement with back pay is necessary to remedy the unfair labor practice. Since the latter issues were not submitted to arbitration, they were obviously not "settled" therein.

Petitioner's contention that even though the question of discrimination was not submitted the agreement to arbitrate should bar recourse to the Board falsely assumes "that by the Board proceeding and arbitration, the Union is seeking to enforce a single right in two forums. Actually, there are quite separate rights involving separate legal and factual issues." *United Steelworkers* v. *American Internat'l Aluminum Corp.*, 334 F. 2d 147, 152 (5th Cir.), cert. denied, —— U.S. ——, No. 690 this term.

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[4] *International Association of Machinists* v. *United Aircraft Corp.*, 56 LRRM 2389 (D. Conn.), aff'd, 333 F. 2d 367 (2d Cir.), cert. denied, ... U.S. ..., No. 533, this term.

The Board's policy of staying its hand in deference to voluntary arbitration of unfair labor practice issues the Board is empowered to decide does not encompass arbitration of "different issues" than those the Board is empowered to decide. *Raytheon Company,* 140 NLRB 883, 884-886; *Monsanto Chemical Company,* 130 NLRB 1097, 1099. By foreclosing in the submission agreement arbitration of any but the specified issues, the parties necessarily left unfair labor practice issues, if any, for the Board.

Petitioner's assumption that Congress' policy of promoting compliance with contract obligations and encouraging arbitration conflicts with its policy of protecting strikers against employer reprisal is entirely groundless. The law requires compliance only with those provisions of contracts which conform to national labor policy. *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 456-457; *NLRB* v. *Rockaway News Co.,* 345 U.S. 71, 78-79; *Local 1976* v. *NLRB,* 357 U.S. 93, 105; *John Wiley & Sons* v. *Livingston,* 376 U.S. 543, 549. Provisions which, in terms or in effect, sanction or immunize reprisal against strikers, or bar recourse against unremedied discrimination, are necessarily unenforceable because they do not conform to that policy. "Obviously, employers cannot set at naught the National Labor Relations Act by inducing their workmen to agree not to demand performance of the duties it imposes * * *." *National Licorice Co.* v. *NLRB,* 309 U.S. 350, 364. No question warranting review is raised by petitioner's disingenuous attack upon "the principle that public rights and duties may not be waived by private contract." Cox, *Rights Under a Labor Agreement,* 69 Harv. L. Rev. 601, 654 (1956).

CONCLUSION

For the foregoing reasons this petition for certiorari should be denied.

Respectfully submitted,

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